

THE LANDLORD TENANT LAW SHEET

Your ready reference about legal issues of interest to the San Diego rental community

***** NEW LAW UPDATE *****

RENT RAISE LAW CHANGED

Tenants entitle to more notice for large raises

From **January 1, 2001** (until **January 1, 2006** when the law is set to expire) there are some new rules regarding raising the rent of an ongoing tenancy (e.g. month to month). Under the old law, the tenant was generally entitled to a 30 day written notice to raise the rent regardless of the amount of the increase. Under the new law, if the landlord wishes to raise the rent during an ongoing tenancy (not a fixed lease) where the raise will be, or add up to, more than 10% of the rent for the last 12 months, **the tenant will be entitled to an additional 30 days notice** beyond the notice time provided in their tenancy.

For example in the usual month to month tenancy, if the rent was raised 5% within the last six months and will be raised another 6% (11% total within the year), **the tenant will be entitled to a 60-day notice to raise the rent**. If the rent increase does not make the total raise for the year more than 10%, the new law will not apply and the tenant may receive the usual (30 days) rent raise notice. The notice must be served properly. Notices of change of terms of tenancy must still be served under the usual service rules except that rent raise notices in residential tenancies, as of January 1, 2001, may also be served by mail alone with 5 days added to the notice period for the mailing time. Thus a 30-day rent notice served by mail becomes a 35-day notice and a 60-day rent notice becomes a 65-day notice.

The new law gives tenants shocked with large rent raises more time to adjust their finances to pay the new rent or more time to search for a more affordable unit. It will also create many legal opportunities for defending evictions and or seeking rent credits or refunds. Remember, however, that **this new law will expire on January 11, 2006**. After that, the old law will apply which eliminates that extra 30 days notice or the right to serve notices by mail alone.

TENANTS LEGAL CENTER OF SAN DIEGO – *Continuing Community Service*

Renters Law Line - 24 hour free legal information line **(858) 571-1166**. (Telephone toll charges may apply)

Internet Web Site - Free site filled with useful information and other free sources.
www.tenantslegalcenter.com .

Training and education We continue to give seminars on various aspects of Landlord-Tenant law to non-profit organizations and government agencies at no cost. Please feel free to all me if I may be of assistance or if your group is interested in receiving a free legal seminar on Landlord Tenant law and relations.

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******* NEW LAW UPDATE *******

NEW DISCRIMINATION LAWS PROTECT **TENANTS REGARDING INCOME**

There are some new rules regarding protection from discrimination based on income. (The law was effective January 1, 2000)

SOURCE OF INCOME Under this new law, a landlord may not discriminate against a tenant based on the source of his/her lawful income. For example, a landlord may not treat a tenant (or prospective tenant) who earns their income by wages any differently than a tenant who receives income from other sources like from public assistance, child support, disability, Social Security, etc. This means that the source of income should play no role in decisions regarding a tenant's credit strength. [(See California Govt. Code section 12955 (d).]

AGGREGATE INCOME A landlord must view multiple tenants (or prospective tenants) income as one total income for purposes of evaluating credit strength. This means, for example, that if roommates apply for a rental,

This is a tremendous victory for tenants in that no longer may a landlord deny a rental application simply because of where the income for that tenant comes from. Further, a tenant with virtually no income can now qualify for a rental if they apply with one or more roommates who qualify as a group.

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Additional Information

SECURITY DEPOSITS

1. A security deposit may be used generally for cleaning, repairs, or to cover rent after the **TENANT** vacates the property. A **TENANT** cannot use the deposit to pay rent during the tenancy without the consent of the **LANDLORD**. The **LANDLORD** may **NOT** charge the **TENANT** for repairs occasioned by ordinary wear and tear.
2. The **LANDLORD** must account for the deposit within 21 days of the move out. This is done by mailing or delivering a refund or an accounting of how the deposit was used, or a combination of the two. Many leases drafted before 1994 limit this time to within 14 days of the move out. If this is the case, the lease probably controls and 14 days, not 21 applies.
3. The penalty for not returning or accounting for the deposit within the required time (if done in bad faith) is up to \$600.00.
4. The maximum amount a **LANDLORD** may charge for a **DEPOSIT** (in addition to the first month's rent) is an amount equal to up to 2 months rent for an unfurnished unit, or 3 months rent if the unit is furnished. Move-in costs may not exceed these limits regardless of calling money "last months rent" or "pet deposit" etc.
5. If the property is sold, the new **LANDLORD** is responsible for deposits. (CC 1950.5)

REPAIRS

1. The **LANDLORD** is obligated to maintain the premises in a habitable condition ("habitability" refers to health and safety conditions). (CC 1941.1)
2. The duty to repair and maintain cosmetic items is governed by agreement of the parties.
3. Substantial defects affecting habitability may relieve a **TENANT** of the obligation to pay the full rent. However, if improperly done, non-payment or partial payment may give the **LANDLORD** an excellent reason to evict the **TENANT**. Thus, great care must be used when contemplating such action as withholding rent. Legal advice prior to doing so is encouraged.

ENTRY ON TO PROPERTY BY OWNER

1. The **LANDLORD**, or an agent may enter the property:
 - a. To make or supply necessary or agreed upon repairs, decorations, alterations, improvements or services;
 - b. To show the property to prospective tenants, buyers, mortgagees, workmen or contractors;
 - c. With a court order; or
 - d. In an emergency.

2. Except in an emergency, the **LANDLORD must** give reasonable notice. “Twenty four hours shall be presumed to be reasonable notice in absence of evidence to the contrary” (CC 1954). Therefore, the **TENANT** must cooperate with the **LANDLORD** but he does have the right to refuse an attempted entry for good reason. If the time requested by the **LANDLORD** is inconvenient the **TENANT** may suggest an alternate time.
3. The code does not allow the **LANDLORD** to enter just to make an “inspection” unless it involves checking on the installation of a waterbed. (CC 1940.5(g.)).
4. Abuse of the right to enter the property by the **LANDLORD** may entitle the **TENANT** to a claim for trespass, violation of property rights and other damages.

EVICTIION NOTICES

1. **30-DAY NOTICE OF TERMINATION OF TENANCY** is required to terminate a month to month tenancy or after a foreclosure. It should be written notice. A **LANDLORD** need not give a reason, but the motivation cannot be retaliatory, discriminatory, or otherwise illegal. Different rules apply for Government subsidized housing where adequate reasons are needed for a 30-day notice. Once given, the **NOTICE** can only be revoked by **MUTUAL** agreement.
Note: For the Section 8 Program the notice must state the reason for the termination.
2. **3-DAY NOTICE TO PAY RENT OR QUIT** notifies the **TENANT** that rent is due. The **TENANT** has 3 days to pay the rent or vacate. If the **TENANT** vacates, he/she is NOT relieved from the rent obligation under the lease or rental agreement.
3. **3-DAY NOTICE TO CURE** (sometimes called **PERFORM COVENANT OR QUIT**). This notifies a **TENANT** that he/she has 3 days to do or stop doing something as per the rental agreement or the law. If the **TENANT** vacates, he/she is **NOT** relieved from the rent obligation under the lease or rental agreement.
4. **3-DAY NOTICE TO QUIT** is generally used in cases of nuisance, waste or foreclosure. In these cases, the **LANDLORD** is not giving the **TENANT** any opportunity to correct anything or pay any rent. The **LANDLORD** is simply demanding that he/she vacate the property in three days.

In all cases (1-4 above), if the **TENANT** remains in possession after the expiration of the **NOTICE** period and in the case of failing to cure a curable 3 day notice (i.e., do or stop doing something or failure to pay the rent), an **UNLAWFUL DETAINER** may be immediately filed.

UNLAWFUL DETAINER

This is a **LAWSUIT** filed in court which seeks to evict and impose a money judgment against the **TENANT** (Defendant). The process moves very quickly and has priority over other types of civil cases. The defendant has 5 days to respond to an **UNLAWFUL DETAINER** if personally served or 15 days if substitute served. One response commonly used is called an **ANSWER** which is the opportunity for the **TENANT** to set forth his/her legal defenses to the lawsuit. The failure to timely file, the improper completion of this form, or the failure to properly raise defenses will result in the loss of valuable rights or the case itself. Losing this case means a money Judgment will be entered against the **TENANT** and he/she will be physically removed from the property. Even if he/she moves out before a trial, the case will still proceed and is **not** automatically canceled by the move out. Please note, however, that if the **ANSWER** was not properly completed and timely filed, there will be **NO** trial since the **TENANT** will have already lost the case and suffered a Judgment by default.

Other issues (besides rent and possession) or “counter-suits” are generally not permitted to be heard in an **UNLAWFUL DETAINER** case while the **TENANT** is still in possession of the rental unit. A **TENANT** may bring them up in a separate action (i.e. Small Claims Court).

24 HOUR FREE SERVICE

The **RENTERS LAW LINE** is a 24-hour information service sponsored by the TENANTS LEGAL CENTER of San Diego. You may call to receive free information on your rights under Landlord Tenant Law. There is no fee or charge for each call (normal toll charges may apply for long distance callers). The number is **(858) 571-1166**.